Apparently not reported up to 15-9 US

145 US 654

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~288.~~ 33 - 8 - ½

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

GEORGE F. STODDER AND HENRY C. LONG, COPARTNERS AS STODDER AND LONG.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JUNE 8, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 283.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

GEORGE F. STODDER AND HENRY C. LONG, COPARTNERS AS STODDER AND LONG.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court rooms in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, district judge of the United States for the northern district of Illinois, on Monday, the first day of June, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundred and ninth year.

WM. H. BRADLEY,
Clerk.

GEORGE F. STODDER AND HENRY C. LONG
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago. } Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the second day of December, 1884, came the plaintiffs by their attorneys and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, their præcipe and bond for costs in said entitled cause, which said præcipe and bond are respectively in the words and figures following, to wit:

2 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

U. S. circuit court, northern dist. Ill., December term, A. D. 1884.

GEORGE F. STODDER AND HENRY C. LONG, copartners doing business under the firm name and style of Stodder & Long,
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago. } Assumpsit, damages $1,000.

The clerk of said court will issue a summons in the above-entitled cause to said defendant, in a plea of trespass on the case upon promises, to the damage of said plaintiffs in the sum of one thousand dollars, and direct the same to the marshal of said district to execute and make it returnable to the December term of said court, A. D. 1884.

SHUMAN & DEFRES,
Plaintiffs' Attorneys.

TO WM. H. BRADLEY, ESQ., *Clerk.*

CHICAGO, *Dec.* 2, 1884.

(Endorsed:) Filed Dec. 2, 1884. Wm. H. Bradley, clerk.
23307

3 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, December term, A. D. 1884.

STODDER ET AL.
vs.
SPALDING, COLLECTOR. } In assumpsit.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiffs of any costs ordered or adjudged to be paid by them, we hereby agree and stipulate that execution may issue against our property for any costs taxed against them.

Dated this 2d of December, A. D. 1884.

SHUMAN & DEFREES.

(Endorsed:) Filed December 2, A. D. 1884. Wm. H. Bradley, clerk.

On the same day, to wit, on the second day of December, 1884, there issued out of said clerk's office a writ of summons in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

4 The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon Jesse Spalding, collector, &c., if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the third Monday of December next, to answer unto George F. Stodder and Henry C. Long, copartners, doing business under the firm name and style of Stodder & Long, of a plea of trespass on the case upon promises to their damage, as it is alleged, of one thousand dollars, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 2d day of December, in the year of our Lord one thousand eight hundred and eighty-four and of our independence the 109th year.

[SEAL.] WM. H. BRADLEY,
Clerk.

Marshal's return.

I have served the within writ by reading the same to and within the presence and hearing of Jesse Spalding, therein named, on the 4th day of December, 1884.

A. M. JONES,
U. S. Marshal.
5 By S. C. HAYES,
Deputy.

(Endorsed:) Filed Dec. 6, A. D. 1884. Wm. H. Bradley, clerk.

Afterwards, to wit, on the fifth day of December, 1884, came the plaintiffs, by their attorneys, and filed in said clerk's office their declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the United States circuit court for the northern district of Illinois, to the December term, 1884.

George F. Stodder and Henry C. Long, copartners doing business under the firm name of Stodder & Long, plaintiffs in this suit (which is a suit arising under the revenue laws of the United States and is brought to recover duties claimed by the plaintiff to have been illegally exacted of them and by them paid under protest), by Shuman & Defrees, their attorney, complain of Jesse Spalding, collector of customs for the port and district of Chicago, defendant herein, who was summoned, etc., of a plea of trespass on the case on promises. For that whereas the said plaintiff heretofore, to wit, on the first day of October, in the year
6 of our Lord one thousand eight hundred and eighty-four, at, to wit, the northern district of Illinois, made payment to the said defendant, collector as aforesaid, of a certain large sum of money, to wit, the sum of two hundred and five dollars and thirty-eight cents lawful money of the United States, as duties, under protest and in order to obtain possession of certain ladies' and children' hoods of wool merchandise imported into the United States for them, the said plaintiffs, entered for consumption at the custom-house at the port of Chicago, in the district aforesaid, under the charge and control of the said defendant as such collector and the said plaintiffs aver that said sum of money above specified, so paid to the said defendant as aforesaid, as duties as aforesaid, was in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was by the said defendant collector illegally demanded and exacted of and from the said plaintiffs. And the said plaintiffs aver that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid, be the proper officers of the customs, they, the said plaintiffs, being dissatisfied with the decision of the said collector, gave notice in writing to the said defendant, as collector, setting forth therein distinctly and specifically the ground of their, the said plaintiffs' objection thereto,
7 and that within thirty days after the date of the said ascertain-

ment and liquidation as aforesaid, the plaintiffs appealed to the Secretary of the Treasury of the United States.

And the said plaintiffs aver that the decision of the Secrefary of the Treasury has been had on said appeal and that this suit has been brought within ninety days after the decision of the said Secretary of the Treasury on such appeal.

By means whereof and by force of the statute of the United States in such case made and provided the said defendant became liable to pay to the said plaintiff the sum of two hundred and five dollars and thirty-eight cents, lawful money as aforesaid, so illegally demanded of, and under protest paid by, the said plaintiffs as aforesaid, and being so liable the said defendant afterwards, to wit, on the day and year and at the district aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiffs well and truly to pay to the said plaintiffs the said sum of money when he, the said defendant, should be thereunto afterwards requested.

And whereas also the said defendant afterwards, to wit, on the same day and year and at the place last aforesaid, became and was indebted to the said plaintiffs in the further sum of one thousand dollars like lawful money as aforesaid, for money by the said defendant before that time had and received to and for the use of the said plaintiffs; and being
8 so indebted the said defendant afterwards, to wit, on the day and year and at the district last aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiff the said sum of money last mentioned, whenever the said defendant should be thereunto afterwards requested. Nevertheless the said defendant (although often requested, etc.) has not paid the said several sums of money above specified, or any or either of them, or any part thereof, to the said plaintiffs; but to pay the same or any part thereof to the said plaintiffs the said defendant hath hitherto wholly neglected and refused and still does so neglect and refuse, to the damage of the said plaintiffs in the sum of one thousand dollars, and therefore the said plaintiffs bring their suit, etc.

SHUMAN & DEFREES,
Plaintiffs' Attorneys.

(Endorsed:) Filed Dec. 5, 1884. Wm. H. Bradley, clerk.

9 Afterwards, to wit, on the thirty-first day of December, 1884, came the defendant, by his attorney, and filed in said clerk's office his appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance.

Cir. Ct. U. S., No. Dist. Ills.

STODDER ET AL. }
vs. }
SPALDING, COLL'R. }

The def't's appearance is hereby entered by his atty.

RICHARD S. TUTHILL,
U. S. Atty.

(Endorsed:) Filed Dec. 31, 1884. Wm. H. Bradley, clerk.

On the same day, to wit, on the 31st day of December, 1884, came the defendant, by his attorney, and filed in said clerk's office his plea in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

In the circuit court of the United States of America for the northern district of Illinois, December term, 1884.

JESSE SPALDING, COLLECTOR, ETC., *at's* vs. GEORGE F. STODDER ET AL. } Assumpsit.

10 And the said Jesse Spalding, defendant, by Richard S. Tuthill (United States attorney for this district) his attorney, comes and defends, etc., when, etc., and says that he did not undertake or promise in manner and form as the said plaintiffs have above thereof complained against him, and of this the said defendant puts himself upon the country, etc.

RICHARD S. TUTHILL,
U. S. Attorney, for Defendant.

(Endorsed:) Filed 31 Dec., 1884. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 9th day of March, in the adjourned March term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

GEORGE F. STODDER ET AL. *vs.* JESSE SPALDING, COLLECTOR, ETC. } Assumpsit.

Now come the plaintiffs, by their attorneys, and the defendant, by the district attorney, and upon issue joined herein by agreement they waive the intervention of a jury and for trial put themselves upon the court, and after hearing the evidence the court takes this cause under advisement.

11 Afterwards, to wit, on the first day of June, 1885, there was filed in said clerk's office the special finding of the court in said entitled cause, which said special finding is in the words and figures following, to wit:

Special finding.

In the circuit court of the United States, northern district of Illinois.

GEORGE F. STODDER *vs.* JESSE SPALDING, COLL., &C. }

The court finds from the proof the facts to be as follows: That the goods in question were wool knit hoods, as entered, and claimed to be du-

tiable under the paragraph of Schedule N, act of March 3, 1883, beginning "Bonnets, hats, and hoods for men, women, and children," at 30 per cent. ad valorem, but classified by the appraiser as a manufacture of wool not specially enumerated or provided for and dutiable at 35 cents per pound and 40 per cent. ad valorem, the goods being valued at above eighty cents per pound.

H. W. BLODGETT,
Judge.

(Endorsed:) Filed June 1, 1885. Wm. H. Bradley, clerk.

12 On the same day, to wit, on the first day of June, in the adjourned May term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Judgment.

GEORGE F. STODDER AND HENRY C. LONG
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago. } Assumpsit.

Now come the parties, by their attorneys, and the court, having considered and being now fully advised upon the matters heretofore submitted herein, finds the issue for the plaintiffs and assesses their damages at two hundred and five dollars and thirty-eight cents, with interest and costs.

It is thereupon considered and adjudged by the court that the plaintiffs do have and recover of the defendant the said sum of two hundred and five dollars and thirty-eight cents, their damages, with interest thereon from the time the same was paid to the defendant, together with their costs in this behalf expended, amounting to twenty-three dollars and forty-six cents, and that they have execution therefor.

13 Afterwards, to wit, on the fifteenth day of June, in the adjourned May term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

GEORGE F. STODDER AND HENRY C. LONG
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago. } Assumpsit.

Now comes the said defendant, by the district attorney, and on his motion it is certified by the court that there was probable cause for the acts done by said defendant, as complained herein.

14 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the

proceedings had in said court in the cause wherein George F. Stodder and Henry C. Long are the plaintiffs, and Jesse Spalding, collector of customs for the port and district of Chicago, is the defendant, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office, in Chicago, in said district, this seventeenth day of February, 1886.

[SEAL.] WM. H. BRADLEY,
Clerk.

15 UNITED STATES OF AMERICA,
Northern District of Illinois.

The United States of America, to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court between George F. Stodder and Henry C. Long, co-partners, &c., plaintiffs, and Jesse Spalding, collector of customs, &c., defendant, in an action of assumpsit, a manifest error hath happened, to the great damage of the said Jesse Spalding, collector of customs, &c., defendant, as by his complaint appears, and it being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1886, in the Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 21st day of January, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the 110th year.

WM. H. BRADLEY,
Clerk of the U. S. Circuit Court, Nor. Dist. of Illinois.

(Indorsed:) Supreme Court of the United States. Jesse Spalding, collector of customs, &c., plaintiff in error, *vs.* George F. Stodder et al., defendants in error. Writ of error. Copy deposited for the defendant in error in the clerk's office, U. S., northern district of Illinois.

16 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To George F. Stodder and Henry C. Long, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 18—, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern dis-

trict of Illinois, wherein Jesse Spalding is plaintiff in error, to show cause, if any there be, why the errors mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. H. W. Blodgett, dist. judge, presiding in circuit court this 18th day of March, in the year of our Lord one thousand eight hundred and eighty-six.

H. W. BLODGETT,
Judge.

I hereby accept service of the within citation.

P. L. SHUMAN,
Plaintiffs' Attorney.

CHICAGO, *March* 22, 1886.

(Indorsed:) 19351. Supreme Court of the United States. Jesse Spalding *vs.* Geo. F. Stodder et al. Citation to October term, A. D. 18—.

(Indorsement on cover:) No. 283. Jesse Spalding, collector of customs for the port and district of Chicago, plaintiff in error, *vs.* George F. Stodder and Henry C. Long, copartners as Stodder & Long. N. Illinois, C. C. U. S. Filed June 8, 1886.

1 U. S. Cir. Ct., No. Dist. Ills.

STODDER ET AL. v. SPALDING, COLL'R, &C. } 19351, 512.

Trial by jury waived in said cause.

SHUMAN & DEFREES,
Att'ys for Plaintiffs.
R. S. TUTHILL,
U. S. Att'y for Def't.

(Endorsed:) Filed March 5, 1885. Wm. H. Bradley, clerk.

NORTHERN DISTRICT OF ILLINOIS, *ss.*:

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the stipulation filed in said court on the 5th day of March, A. D. 1885, in the cause wherein George F. Stodder et al. are the plaintiffs, and Jesse Spalding, collector, &c., is the defendant, as the same appears from the original thereof now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, northern division, this 12th day of October, A. D. 1889.

[SEAL.] WM. H. BRADLEY,
Clerk.

2 (Indorsed:) U. S. Cir. Ct. 19351, 512. Stodder *v.* Spalding Jury waiver.

3 Supreme Court, U. S. 1889, October term. No. 33. Jesse Spalding, coll'r, &c., pl'ff in error, *vs.* Stodder & Long. Certified copy of stipulation waiving jury. Filed Oct. 15, 1889.

4 Supreme Court U. S. 1889, October term.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port & district of Chicago, pl'ff in error, *vs.* GEORGE F. STODDER AND HENRY E. LONG, copartners as Stodder & Long. } No. 33.

On motion of Mr. Solicitor-General Chapman and consent of Mr. Henry E. Tremain, of counsel for the defendant in error, in open court,

1

it is ordered that the certified copy of stipulation waiving a jury trial in the court below in this cause be made part of the record of this court in this cause.

October 17, 1889.

O. W. CHAPMAN,
Solicitor-Gen'l.

Above order may be entered.

H. E. TREMAIN,
For Defendants in Error.

5 (Indorsed:) Supreme Court U. S. 1889, October term. No. 33. Jesse Spalding, collector, &c., pl'ff in error, *vs.* Geo. F. Stoddard et al. Order & stipulation making certified copy of stipulation waiving jury part of record.

Office Supreme Court U. S. Filed Oct. 17, 1889. James H. McKenney, clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 33.

JESSE SPALDING, COLLECTOR, ETC., FOR CHICAGO, PLAINTIFF IN ERROR,

vs.

GEORGE F. STODDER AND HENRY C. LONG, COPARTNERS AS STODDER & LONG.

MOTION TO DISMISS OR AFFIRM.

I. The record in this case corresponds in character to the records in seven other similar causes concurrently docketed and disposed of at the last term of this Court. The judgments were affirmed on May 13th, 1889. (*See Spalding* vs. *Manasse; Same* vs. *Farwell, etc.*, ~~130~~ 131 *U. S.*, 65.) This Court decided that, the cases "being tried by the Court without a jury, by agreement of the parties, as alleged in the record, but without any allegation that the stipulation was in writ-

ing, as required by the statute and the rulings of this Court (citing them), no error could be examined in the rulings of the Court at the trial. We can only inquire whether the declarations were respectively sufficient to sustain the judgments. As there appears to be no error in this regard, the judgments are all severally affirmed."

This case is the same.

II. The further point is here taken that the so-called "special findng" (at folio 11) presents no issue. Its statement that the controversy concerned some "*hoods*" entered and claimed to be dutiable "at thirty per cent.," and "classified by the appraiser" at some other rate, does not minify the allegations in the declaration, which is, of course, sufficient to sustain the judgment below.

III. The further point is also taken that the docketing here of this block of cases (including this one) of apparently insignificant character is, in the absence of adequate explanation, without administrative reasons, and is entitled to be classified judicially with writs of error prosecuted for delay, and to be disposed of accordingly. In any event, defendants in error claim that there is no substantial question of law suggested. By the tariff of 1883 (Schedule N) "HOODS for men, women, and children" are dutiable at 30 per cent., whether composed of "chip, grass, palm-leaf, willow, or straw, or any vegetable substance; hair, whalebone, OR OTHER MATERIAL," and the *particular article*, HOODS, *is not elsewhere specified in the tariff*.

A special description will pr evail over a more general one

A special duty leviable *eo nomine* applies as against a more generic description. Articles specially enumerated have been uniformly held by this Court to be withdrawn from the more general phrases which might otherwise suffice to include them. See *Lahey* vs. *Arthur*, 96 *U. S.*, 113, where "thread lace," although of silk, was held more specific than "silk lace;" also *Victor* vs. *Arthur*, 104 *U. S.*, 408, where "stockings" were held to prevail as a more specific enumeration than "knit goods."

Indeed, the particular clause above cited in the record of the case at bar, page 6, has been substantially construed here when this court interpreted its corresponding clause found in the same schedule for a twenty per cent. duty upon "braids, * * * laces, trimmings, * * * used for making or ornamenting hats, bonnets, and hoods composed of straw, chip, grass, palm-leaf, willow, hair, *or any other substance or material*." This specific enumeration was held to prevail over the more generic provision of manufactures of silk, for which 50 per cent. was assessable; and the silk millinery trimmings were held dutiable at 20 per cent., being more particularly described as *used for making or ornamenting hats* than as manufactures of silk. If his opinion were requested, would not the Attorney General be constrained to declare that the case of *Hartranft* vs. *Langfeld*, 125 *U.S.*, 128 (April 25, 1888), was controlling upon the case at bar? So *Zimmerman* vs. *Arthur*, 96 *U. S.*, 124, declared *braids for hats* to be more specific than the generic term "*cotton braids*," and consequently to exclude such articles from the higher duty assessed upon "*cotton braids*."

In view of repeated adjudications, there is no reasonable

question of law arising upon the suggestion that "wool knit hoods" are not dutiable under Schedule N, for "bonnets, hats, and hoods for men, women, and children," at 30 per cent.

The judgment below should therefore be affirmed.

HENRY EDWIN TREMAIN,
PERCY L. SHUMAN,
For Defendants in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1869.

JESSE SPALDING, COLLECTOR OF customs for the port and district of Chicago, plaintiff in error,
vs.
GEORGE F. STODDER AND HENRY C. LONG, copartners as Stodder & Long.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

In the Supreme Court of the United States.

OCTOBER TERM, 1889.

JESSE SPALDING, COLLECTOR OF customs for the port and district of Chicago, plaintiff in error,
vs.
GEORGE F. STODDER AND HENRY C. LONG, copartners as Stodder & Long.
No. 33.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT OF CASE.

The plaintiffs below imported at the port of Chicago wool-knit hoods, and claimed they should be classified under the paragraph of Schedule N in the tariff act of 1883 beginning "bonnets, hats, and hoods, for men, women, and children," etc., at 30 per cent. ad valorem. The appraiser classified them as "manufactures of wool,

not specially enumerated or provided for," which are dutiable at 35 cents per pound and 40 per cent. ad valorem, the goods being valued at above 80 cents per pound. The duties were assessed according to the latter classification. The plaintiffs brought suit for the difference. Jury was waived. The court found the facts specially, and entered judgment thereon for the plaintiffs.

SPECIAL FINDING.

The court finds from the proof the facts to be as follows: That the goods in question were wool knit hoods, as entered, and claimed to be dutiable under the paragraph of schedule N, act of March 3, 1883, beginning "Bonnets, hats, and hoods for men, women, and children," at 30 per cent. ad valorem, but classified by the appraiser as a manufacture of wool not specially enumerated or provided for and dutiable at 35 cents per pound and 40 per cent. ad valorem, the goods being valued at above 80 cents per pound (pp. 5 and 6).

The judgment will be found on page 6.

SPECIFICATION OF ERROR.

The court erred in entering judgment in favor of the plaintiffs and against the defendant in this, that the hoods in the special finding were rightly classified by the collector as manufactures of wool not specially enumerated or provided for, and were dutiable at 35 cents per pound and 40 per cent. ad valorem, and they should not have been classified and assessed as claimed by the plaintiffs below.

BRIEF OF ARGUMENT.

I.

Schedule K of the tariff act of 1883 *undoubtedly covers* these "wool hoods" *unless* they are "specially enumerated or provided for" in schedule N of the same act.

The material portion of schedule K reads:

> Woolen cloths, woolen shawls, and *all manufactures of wool of every description, made wholly or in part of wool*, not specially enumerated or provided for in this act, valued at not exceeding eighty cents per pound, thirty-five cents per pound and thirty-five per centum ad valorem; valued at above eighty cents per pound, thirty-five cents per pound, and in addition thereto forty per centum ad valorem." (22 Stat., 508, see eleventh paragraph at bottom of page); T. I., 362.)

There is no clause of the act which can be said to "specially enumerate or provide" for these hoods, except Schedule N, and it *only remains* to see whether that does it.

II.

Schedule N of the Tariff Act of 1883 does not cover these *wool* hoods.

The only paragraph in Schedule N which is claimed to be applicable, reads:

> Bonnets, hats, and hoods for men, women, and children, composed of chip, grass, palm-leaf, willow, or straw, or any other vegetable substance, hair, whalebone, or other material not specially enumerated

or provided for in this act, 30 per centum ad valorem. (22 Stat., 511, see seventh paragraph); T. I., 400.)

A.—The words in the above paragraph "or other material" must be construed as if they were, "or other *like* material," under the following elementary rule of construction:

> Where general words follow particular words, the rule is to construe the former as applicable to the things or persons particularly mentioned. (Sedg. on Const. of Stat. and Const. Law, 361 2d ed.)
>
> Where particular words are followed by general ones, the latter are to be held as applying to persons and things of the same kind with those which precede. (Potter's Dwarris on Stats. and Const's, 236.)
>
> The general word which follows particular and specific words of the same nature as itself; takes its meaning from them, and is presumed to be restricted to the same genus as those words; or, in other words, as comprehending only things of the same kind as those designated by them, unless, of course, there be something to show that a wider sense was intended. (Endlich on Inter. of Stats., § 405 *et seq.*)

This author gives a large number of illustrations (citing cases), following Maxwell on Statutes (p. 405 *et seq.*), a few of which are here given.

The words "and all other trades, avocations, or professions whatever," following the word "auctioneers," have been held not to include lawyers.

The words "or other person," following the words "no tradesman, artificer, workman, laborer," have been held

not to include a coach proprietor or a farmer. The words "or other craft," following the words "any wherry, lighter," have been held to include only vessels of the same kind as wherries and lighters, not steam-tugs, which carried neither passengers nor goods.

The words "or other product," following the words "corn, grass," held to include only products similar to grass and corn.

The words "or other property," following "timber, lumber, coal," held to include only things of the same kind as timber, lumber, or coal.

The words "or other building," following "house, warehouse, counting-house, shop," held to include only those of like character as to permanence, utility, and occupation.

The words "or other errors," following the word "clerical," held as referring only to matters of form in an assessment roll.

These are a few of the many illustrations of the elementary rule of construction applicable, when a general word follows closely less general terms *ejusdem generis*.

B.—*Unless* these words be so construed, the words "chip, grass, palm-leaf, willow, or straw, or any other vegetable substance, hair, whalebone" are *utterly meaningless*—undeniably surplusage—for the words "other material" cover every existing material. If that meaning be given to these words, then a specification of so many materials was worse than useless.

It is hardly conceivable, that Congress or the framer of the clause, could have made the research, exercised the

care and taken the time necessary to have made this comprehensive group of enumerated articles, with no intent and for no purpose whatever.

This can hardly be a case of *accidental* insertion. It is a painstaking and careful classification and enumeration.

If the importers' position be correct, it was an elaborate effort to insert a troublesome excrescence in the paragraph.

C.—Schedule N specially enumerates and provides for "hoods"—*not* of *all* kinds—but hoods of a *few* kinds, to wit, "hoods" that are "composed of chip, grass, palm-leaf, willow, or straw, or other vegetable substance, hair, whalebone, or other [like] material."

Congress has thus carefully limited the *general* word "hoods" to hoods of a few specified materials, so that the word hoods as thus used is *only* a specific enumeration of hoods composed of these designated materials. Hoods made of *any other* materials than those specified, are not designated in Schedule N.

Our meaning will be better understood if we *fully* amplify the paragraph as follows:

Schedule N provides for and covers hoods "composed of chip" * * * "not specially enumerated or provided for in this act."

Hoods composed of "grass" not specially enumerated, etc.

Hoods composed of "palm leaf" not, etc.

Hoods composed of "willow" not, etc.

Hoods composed of "straw" not, etc.

Hoods composed of "any other vegetable substance" not, etc.

Hoods composed of "hair" not, etc.

Hoods composed of "whalebone" not, etc.

Hoods composed of "other [like] material" not specially enumerated or provided for in this act.

These hoods—hoods composed of these materials, this limited class and kind of hoods—are the *only* ones that are covered by Schedule N; *no other* hoods are.

"*Hoods*" that are "composed" of "*wool*" are not, and can not be, covered by Schedule N, but are provided for in Schedule K alone.

It is this distinction that takes this case out from under the case of *Arthur* v. *Lakey* (96 U. S. R., 112, 118), and other like cases. It is there held that

> When Congress had designated an article by its specific name, and imposed a duty upon it by such name, general terms in a subsequent act, or in a later part of the same act, although sufficiently broad to comprehend such article, are not applicable to it.

No doubt this is correct. Our position is not at all in conflict with it.

The distinction is, as we have seen, that the "hoods" which Congress has "designated" are *chip* hoods, *grass* hoods, *palm-leaf* hoods, etc.

D.—It is a singular, and perhaps a *significant* fact, that this exact question can only be raised under two paragraphs in the tariff act of 1883—this one (T. I., 400) and the fifty-fifth (T. I., 448), in the same schedule, N.

T. I., 400, refers to "bonnets, hats, and hoods," and T. I., 448, refers to "materials" for bonnets, hats, and hoods.

E.—It is submitted that Congress intended by this *peculiar phraseology* in T. I., 400, and T. I., 448, to exempt hats, bonnets, and hoods; and hat, bonnet, and hood materials composed of silk or of wool from these two paragraphs.

In view of the well-known fact that Congress was especially tender of the wool and silk industries, it is fair to presume that the duties thereon would not be lessened.

But other manufactures of wool are charged a duty of 40 per cent. and over (T. I., 362), and goods of silk a duty of 50 per cent. (T. I., 383).

F.—For these reasons, it is respectfully submitted that *hoods* of *wool* are not covered by Schedule N.

O. W. CHAPMAN,
Solicitor-General.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 33.

JESSE SPALDING, Collector, Etc., for Chicago,
Plaintiff in Error,

vs.

GEORGE F. STODDER AND HENRY C. LONG,
Copartners as STODDER & LONG.

Brief for the Defendants in Error.

Statement.

The Court below being "fully advised upon the matters heretofore submitted herein," upon a trial of common law issues, jury being waived, "finds the issue for the plaintiffs and assesses their damages at $205.38, with interest and costs" (Record, fol. 12), and judgment was entered accordingly.

The issue, as stated in the declaration, was that the defendant collector illegally exacted that sum for duties

paid, under plaintiffs' "protest, and in order to obtain possession of certain *ladies' and children's hoods* of wool, merchandise imported" by plaintiffs at the port of Chicago, which said sum "was in excess of the amount of duties authorized by the laws of the United States," and was "illegally demanded and exacted" (see Record, fols. 6–7).

POINTS.

I.

This issue must be taken as true here by virtue of the judgment.

Nor is this result, we submit, affected by the so-called "special finding" which recites that the merchandise was "*claimed* to be dutiable * * * at 30 per cent. *ad valorem*, but classified by the *Appraiser* as a manufacture of wool * * * dutiable at 35 cents per pound, and 40 per cent *ad valorem*" (Rec., fol. 11).

The record is silent as to whether the illegal exaction as adjudged proceeded from the foregoing described classification "by the appraiser," or from some other more direct or potential cause. It may have resulted from an arithmetical error in a calculation based upon and made according to the 30 per cent. rate claimed. That there was an illegal exaction is declared by the judgment upon the facts, and error in that judgment is not to be *presumed*, but must be affirmatively shown. It will not be *presumed* that the judgment resulted from any "classification by the appraiser." The judgment resulted from an illegal exaction by the *defendant*, the *collector*, who

received more moneys than was "authorized by the laws of the United States" (Rec., fol. 6). Had the "special finding" recorded the facts to be that the illegal sum was arrived at because the *defendant* calculated by a certain described method other than at the rate of 30 per cent *ad valorem*, then this Court might have inquired into that method. But *this* Court has no more concern as to how the imported merchandise was classified "*by the appraiser*" than had the defendant collector.

There is no statute making it the duty of the *appraiser* to *classify*. This duty is exclusively with the Collector, in conjunction with the naval officer. The *appraiser* acts exclusively on *values*, and reports on the verity and integrity of invoices. Because the appraiser, for convenient custom house information, or by usage, further reports his *views* as to classification, is of no import to the Collector.

Classification as to rate is the function of the Collector; and as he is not bound by, so he will not be presumed to have followed, the *appraiser's* classification.

By the Treasury Regulations of 1884, Article 556, it is provided: "Appraisers are required to report to the Collector *their opinion* as to the proper classification of imported articles submitted to their examination. * * *" As to *classification*, appraisers have no office except to report their *opinion*, and this only by virtue of Treasury Regulations. The statute makes no provision for such a duty. They simply provide, as expressed in Article 1408 of the same Treasury Regulations, that the appraisers are "to diligently and faithfully examine and inspect such goods as Collectors may direct, and to correctly ascertain by all reasonable ways and means and report to the best of their knowledge the quantity, character, and actual foreign market value thereof, etc. * * * Their examination embraces the quantity, value and condition of the goods, * * * and is made the basis (Article 1409) of the general

classification of importations for the imposition and assessment of duty."

This is the purpose of the appraisers' acts. It is the collector who classifies and *decides* classification, and not the appraiser. See also U. S. R. S., Sections 2899, 2901, 2902, 2950; also 2614 and 2931. The appraisers are to examine, to inspect, and to report the true value in foreign markets. They have nothing to do with the classification, and the Courts have so held.

There is, therefore, no *presumption* in the record of the case at bar that the excessive illegality adjudged had any legitimate relation to the *action of the* APPRAISER. The so-called "special finding" does not show that the defendant, Collector, did not adopt and assess according to the plaintiff's claim for a 30 per cent. rate, and there is no presumption or record evidence that the *collector assessed according to any other rate.* The only *presumption* arises from the judgment upon "the issue" that there was an excessive exaction to the damage stated. The judgment may, therefore, be affirmed without regard to the alleged "specification of error" that the merchandise should not be declared dutiable at 30 per cent.

II.

The true duty was thirty per cent.

If the merits of the classification at 30% *ad valorem* are open to inquiry upon this record, the claim of the Government now made is out of harmony with the deliberate decisions of the heads of the Department of Justice and of the Treasury, and the corresponding adjudication by this Court.

The Government Brief claims that the "ladies' and childrens' hoods of wool" were not dutiable at 30 per cent. under the paragraph in Schedule N, Tariff of 1883, reading: [Par. 400, T. I. (New)] "Bonnets, hats and hoods for men, women and children, composed of chip, grass, palm leaf, willow or straw, or any other vegetable substance, hair, whalebone **or other material,** not specially enumerated or provided for in this act, thirty per centum *ad valorem.*"

The brief does not dispute the proposition that "*hoods*" are not elsewhere specifically mentioned; but claims that from this quoted paragraph *some* hoods are to be excluded, and arrayed under the more generic phrases of "*manufactures of wool,* * * * not specially enumerated, etc.," in Schedule K. The brief (see its "D") claims "to exempt hats, bonnets, and hoods; and hat, bonnet and hood materials composed of silk or wool from "the foregoing cited paragraph in Schedule N, and from its corresponding paragraph following it (which places the articles for "making and ornamenting hats, bonnets and hoods" at twenty per cent. T. I., 448–400).

The recognition by the brief (pp. 7, 8) of the similarity of the question raised with the question as to classification of a *silk bonnet* at thirty per cent. under Schedule N, instead of at fifty per cent., as a "manufacture of silk" under Schedule L, brings the Government here in an attempt to secure from this Court a sudden condemnation of the administration of the clauses in question as recognized ever since their enactment.

This course of administration was entered upon when the new tariff took effect in July, 1883, and when questioned was reviewed in the following opinion by the Attorney-General:

"DEPARTMENT OF JUSTICE,
WASHINGTON, D. C., Feb. 15, 1884.

SIR—By your letter of the 19th of November last my attention is called to certain provisions in the Tariff Act of March 3, 1883, Chap. 121, and an opinion is requested from me as to the proper construction thereof. I have now the honor to submit the following in compliance with your request.

In Schedule N of that act it is provided—'Bonnets, hats and hoods for men, women and children, composed of chip, grass, palm-leaf, willow or straw, or any other vegetable substance, hair, whalebone or other material, not specially enumerated or provided for in this act, 30 per centum *ad valorem*.' The question arising upon this provision I understand to be whether the words 'not specially enumerated or provided for in this act,' apply to the *articles* designated (*i. e.*, bonnets, hats and hoods, for men, women and children) or to the *material* of which they are composed.

Upon consideration I am of the opinion that the words referred to were meant to apply to articles of the description mentioned, and not to the material out of which such articles are made. The aim of the provision is to classify for revenue purposes, certain *articles of manufacture*, and to subject *them* to the particular duty thereby imposed, and to signify that it is intended to be a *general* one, covering all such articles, is the object of the words in question. **It is meant to comprehend bonnets, hats, &c., of whatever material composed,** which are not elsewhere in the act 'specially enumerated or provided for.' Thus, while hats of wool, being specially provided in Schedule K, are not within its scope, it must be deemed to embrace hats of silk, these not being elsewhere in the act specially enumerated or provided for.

A similar question is also understood by me to arise upon the following provision in Schdule N of the same

act: 'Hats and so forth, materials for: Braids, plaits, flats, laces, trimmings, willow sheets and squares, used for making or ornamenting hats, bonnets and hoods, composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any other substance or material not specially enumerated or provided for in this act, 20 per centum *ad valorem*.'

The words 'not specially enumerated or provided for in this act,' as employed in this provision apply, in my opinion, to the *articles* (braids, plaits, laces, trimmings, tissues, &c.) used for making or ornamenting hats, bonnets, &c., and not to the material of which those articles are composed.

This view is founded upon the same considerations upon which the construction given by me to the first-mentioned provision rests.

I am sir, very respectfully,

(Signed) BENJAMIN HARRIS BREWSTER,
Attorney-General.

HON. CHARLES J. FOLGER,
Secretary."

This opinion was adopted by the Treasury Department in the following decision of Secretary Folger:

"TREASURY DEPARTMENT,
Office of the Secretary,
Washington, D. C., Feb. 25th, 1884.

SIR—I am in receipt of your letter of the 20th inst., in regard to the liquidation of entries of hat trimmings made wholly or in part of silk, and the rate of duty due thereon.

The question arises whether hat trimmings of the character specified are dutiable under Schedule N, paragraph 448, or at 50 per cent. *ad valorem*, under Schedule L, paragraph 383. The question was referred to the Attorney-General under date of the 19th of No-

vember last, and a copy of his opinion dated the 15th inst. is appended hereto.

You will see that he holds that the articles mentioned are dutiable at 20 per cent., and also that hats, bonnets and hoods for men, women and children, not specially enumerated as such in the tariff, are dutiable at 30 per cent. under Schedule N, paragraph 400. This would embrace bonnets, hats and hoods for men, women and children, composed of silk, they not being especially named in Schedule L.

At present the Department confines the application of the opinion to the tariff of March 3, 1883. Unliquidated entries will be disposed of accordingly, and you will cause your action in future to conform thereto. Further consideration will be given to the question as to how far the opinion controls under the tariff act in force prior to March 3, 1883.

The limitations under which this decision will be enforced are set forth in decision 5542.

Very respectfully,

(Signed) CHAS. J. FOLGER,

Secretary.

Collector of Customs, New York."

[Synopsis of Decisions, Treasury Department, 1884, page 93 (6197).]

This course of administration has been pursued up to 1889 [see further Treasury rulings recited in Appendix A hereto]. Repeated adjudications in the circuits, at New York, Chicago and Philadelphia, have concurred. In this Court the record in *Hartranft vs Langfeld, 125 U. S., 128*, shows the error specified by the Government to have been that the articles were dutiable as manufactures of silk and not as millinery articles "composed of straw, chip, grass, palm leaf, willow, hair *or any other substance or material*." This contention on the part of the Government was then as now adverse to the foregoing opinion of Mr. Attorney-General Brews-

ter, and also to an unpublished concurring opinion of Mr. Attorney-General Garland, but was disposed of by this Court in accordance with those opinions.

Under these circumstances it would seem that this renewal of the attempt to secure the aid of this Court in throwing confusion into a well-defined course of tariff administration—and a course possessing such uniform executive and judicial approval—should not be received with favor. It is noteworthy here that no *law* officer has been asked or has ventured to express an opinion approving the interpretation contended for in the Solicitor-General's brief in this case.

III.

In further support of the merits

Of the application of the paragraph assessing thirty per cent. duty upon "ladies' and children's hoods of wool" it is submitted that the particular article HOODS is not elsewhere specified in the tariff. "*Hats* of wool" *are* specified, and so would *not* be dutiable at 30 per cent.; but *hoods* or *bonnets* are not otherwise mentioned.

It would be intrusive to detain attention by citing to this Court its frequent revenue adjudications that a special description will prevail over a more general one. A special duty leviable *eo nomine* upon a "*hood*" prevails as against a more generic description of a "manufacture of silk," or a "manufacture of wool." Articles specially enumerated have been uniformly held by this Court to be withdrawn from the more general phrases which might otherwise suffice to include them.

Thus "thread, lace and insertings," although of silk, were held more specific and applicable than "silk laces" (Lahey vs. Arthur, 96 U. S., 113); and "stock-

ings," although knit, more specific than "knit goods' (Victor vs. Arthur, 104 U. S., 408); and "braids used for hats," although made of cotton, to be more specific than the generic term "cotton braids," and consequently to exclude cotton *hat* braids from the higher duty imposed on *cotton* braids" (Arthur vs. Zimmerman, 96 U. S., 124). Other equivalent cases might be cited. This line of incontestable authorities is necessarily recognized in the Government Brief, and the attempt made to distinguish the case at bar.

This attempt confessedly includes the necessity of inserting another word in the statute not placed there by Congress. The effort, if successful, will record the first instance where this Court has inserted one word in a tariff description. It is proposed to insert the word "like" so as to read: hoods composed of "other [like] material." "Like" what? Hoods composed of material *like* chip, grass, palm leaf, willow or straw, or any other vegetable substance, hair or whalebone? Could *any* material be like unto all these things? Or like unto chip, straw, hair or whalebone, for instance? Or does he imply some individual *like*ness? *i. e.*, like unto *any* vegetable substance, or like unto *any* grass, or like unto *any* hair? And what is "*like*" unto any hair if it be not the hair of the sheep, or the soft wool of the lamb, or the grassy fibre of the camel, or the mixed cotton worsted yarn, or the soft silken thread of the cocoon?

And who shall say what character of likeness shall prevail; a similarity of color, durability, fibrousness, textitility, of uses, of value, of marketability, of variety, of form, of fashion, or of attractiveness, or what not?

Webster's definition of the word "like" would tend to still greater confusion, "1. Equal in quantity, quality or degree; 2. similar, resembling, having resemblance."

Congress has in some few tariff phrases used the word "like," but not where it would be apt to prove

troublesome, and the word was rarely used in the tariff of 1883. It speaks (in Sched. K) of "hair of the alpaca, goat, and other like animals" (356), and of "outside garments * * * and goods * * * used for like purposes" (367); thus creating limitations which the absence of the word "like" would not imply. As the word "like" could not be judicially supplied or substituted for the word "all" in such phrases, so if it were not in the actual language it cannot be judicially supplied where omitted in any other place.

It would be a species of judicial fiction so to read a statute, the language of which was clear and capable of obvious signification, that its natural meaning should be falsified into proposing an unsatisfactory if not inexplicable comparison. What would a Judge tell a jury would be signified by the word "like" in such a tariff phrase? He would be apt to declare that they might apply it according to the testimony and their common knowledge and determine for themselves as they chose how much one article was "like" the other. This Court, if phrasing legislation, would not so construct its descriptions. Will it judicially legislate so as to throw odium on the language of Congress, to create uncertainty where none exists, to insert words unessential to an ordinary meaning, and to accomplish results which there is no evidence were intended, and which will uproot the careful adjudications of this high tribunal.

IV.

The judgment should be affirmed.

HENRY EDWIN TREMAIN,
For Defendants in Error.

APPENDIX.

A.

Treasury Rulings indicating the course of administration of the hat, bonnet and hood paragraphs in Schedule N of Tariff of 1883.

(6299) Tweed Hats—Duty on.

Treasury Department, April 15, 1884.

SIR—The department is in receipt of your letter of the 22d ultimo, transmitting the appeal (5380i) of D. P. Ilsley & Co. from your decision assessing duty at the rate of 40 cents per pound and 35 per cent. *ad valorem* on certain tweed hats imported per "Samaria," October 19, 1883, which the appellants claim to be dutiable at the rate of 30 per cent. *ad valorem*.

These hats, as the appraiser states, are not the "hats of wool" or felt hats (see Department's ruling of September 1, 1860), which are specified in Schedule K (T. I., new, 363), but consist of hats made of a tweed cloth. Hats of this character and hats of all kinds, except those commercially known as "hats of wool," are dutiable at the rate of 30 per cent. *ad valorem*, under the special provision of Schedule N (T. I., New, 400), for "hats * * * for men, women and children," &c., and Department's ruling of February 27, 1884 (Synopsis, 6197). You will reliquidate the entry accordingly. Very respectfully, H. F. French, Assistant Secretary.

Collector of Customs, Boston, Mass.

This decision was affirmed more than three years later, as follows :

(8506). Tweed Hats and Tweed Caps.

Treasury Department, October 28, 1887.

SIR: The Department duly received your letter of August 9, last, in regard to a variance at different ports in the classification of tweed hats.

In reply, I would call your attention to the Department's decision of April 15, 1884 (Synopsis 6299), in which it is held that tweed hats are dutiable at the rate of 30 per cent. *ad valorem*, under T. I., 400. * * * Respectfully yours, C. S. Fairchild, Secretary.

Philip W. Downes, Esq., U. S. General Appraiser, Baltimore, Md.

Going back again to 1884, we find:

(6487). Felt Hats of Rabbits' Fur.

Treasury Department, July 24, 1884.

SIR: The Department is in receipt of your letter of the 25th *ultimo*, transmitting the appeal (9217i) of N. Cordero from your decision assessing duty at the rate of 35 cents per pound, and 40 per cent. *ad valorem* on certain felt hats imported at Laredo on the 2d *ultimo*, which the appellant claims to be dutiable at the rate of 30 per cent. *ad valorem*, under Schedule N (T. I., new, 400).

The sample shows that the articles are not "hats of wool," specified in Schedule K (T. I., new, 363), but are felt hats, made of rabbits' fur.

These hats, not being specially provided for, are dutiable at the rate of 30 per cent. *ad valorem*, under the provision (T. I., new, 400) for "hats * * * for men, * * * composed of * * * other material, not specially enumerated or provided for in this act."

You will adjust the entry accordingly. Very respectfully, Chas. E. Coon, Acting Secretary.

Collector of Customs, Corpus Christi, Tex.

In Synopsis of Decisions, Treasury Department 7430, under date of March 26, 1886, Secretary Fairchild in a letter to the Collector of Customs at Boston, in reply to his letter of the 6th of February, 1886, says, among other things—

"Upon investigation, the Cape net is found to be a cotton lace which is finished stiff and used exclusively in the manufacture of hat crowns or foundations * * * The woolen goods embroidered, it appears, when cut into squares are used exclusively for crowns, and when in that form are entitled to entry at the rate of 20 per cent. *ad valorem*, as 'hat trimmings.' * * * You will please cause the practice at your port to conform to these views."

So also a few months afterwards he says in—

(7724) Hat Materials—Silk Lacets Dutiable as.

Treasury Department, August 28th, 1886.

Sir—The Department is in receipt of your letter of the 19th instant. * * *

From the report of the appraiser and an inspection of the sample submitted, it is understood that the goods in question are the silk lacets or braids generally used for the purpose of securing the ends of the sweatleather in men's and boys' hats.

The Department decides that these lacets are in fact material for hats within the meaning of T. I. new, 448, and you will reliquidate the entry accordingly, and take measures for a refund of the duty exacted thereon in excess of 20 per cent. *ad valorem*. Respectfully yours, C. S. Fairchild, Acting Secretary.

Collector of Customs, New York.

Secretary Folger had previously held the same views. One of his decisions, in which he reaffirms *after consideration* the opinion already cited by the Attorney-General and concurred in by him is as follows:

(6226). Silk Hats and Hat Trimmings.

Treasury Department, March 7, 1884.

SIR—I have considered the matters stated in the letter of the appraiser at your port, dated the 3d instant, copy enclosed, in regard to the opinion of the Attorney-General, embodied in a circular of this department, of the 27th ultimo, relating to the duties on hats and hat trimmings, made wholly or in part of silk, under the act of March 3, 1883.

I am satisfied that the opinion contains a proper construction of the law, and hence cannot withdraw my acquiescence therein.

* * * Action will be taken accordingly * * *

Very respectfully, Chas. J. Folger, Secretary.

Collector of Customs, Philadelphia, Pa.

And this principle of construction was adopted and applied by the department. This is shown by all the foregoing and also by

(6375). Hat Materials and Trimmings.

Treasury Department, May 28, 1884.

SIR—The Department is in receipt of your letter of the 3d instant, transmitting the appeals (6883i, 6884i 6885i and 6886i) of Kempner & Weill, per "France," "Amerique," and "Canada" (two entries), in September last, and (6887i), of Veit & Nelson, per "Normandie," October 2, 1883, from your decision assessing duty at the rate of 50 per cent. *ad valorem* on certain so-called hat materials and trimmings, which the appellants claim to be dutiable at the rate of 20 per cent. *ad valorem* under Schedule N (T. I. new, 448).

The appraiser reports that the goods in question consist of (1) hat crowns of silk and beads; (2) hat-trimmings of silk and metal * * *

With regard to the "hat-crowns" and "hat trimmings," which are used extensively in the making or

ornamenting of womens' hats, the appeals are well taken, and such articles are dutiable at the rate of 20 per cent. *ad valorem*, under Department's ruling of February 27, 1884 (Synopsis, 6197). See, also, Department's ruling of the 20th instant on the appeal (7147i) of Veit & Nelson * * * You will reliquidate the entries accordingly. Very respectfully, H. F. French, Assistant Secretary.

Collector of Customs, New York.

NOTE. Stating the *ejusdem generis* claim of the plaintiff in error most favorably for him would imply that general words following particular and specific words may in some instances be restricted to the same *genus* as those words. Now "*genus*" is defined in the Imperial Dictionary as "a class of a greater extent than species; a universal which is predicable of several things of different species."

In Stormonth's Dictionary "*genus*" is "that which has several species under it." Applying these definitions to the paragraph in question we find that it would still provide for "all vegetable substances"—a term concededly broad enough to cover every variety of *vegetable* material; for articles of "whalebone," defined by same authority as "an elastic, horny substance;" for articles of "hair," defined as "fibre or threads of different degrees of fineness which cover the bodies of many animals; also *anything very small and fine* having length." (So that if "like" hair the likeness cannot be restricted to the hair of any particular animal.)

The statute would then read, even upon the theory of plaintiff in error, and adopting the latter's amplifications on pages 6, 7, of his brief, "Bonnets, hats and hoods * * * composed of * * * any vegetable substance, hair, whalebone or other material (of the same genus)," *i. e.*, material like any elastic, horny sub-

stance, or like to any fibre of animal covering, or like unto any fibre or thread having length.

So that in any event, upon this view, the statute applies to all hats, bonnets and hoods composed of vegetable or animal fibre, unless individually elsewhere enumerated, *e. g.*, not to "hats of wool," which are elsewhere specified (Par. 363, Sched. K.), but is applicable to "ladies' and children's hoods of wool."